

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,
Plaintiff,

vs.

C.O. LESTER,

Defendant.

FILED
HARRISBURG

JUN 27 2001

Civil No. 01-CV-01-0041

U.S. District Judge Raimondo
Magistrate Judge Smyser

MARY E. D'ANDREA, CLERK

DEPUTY CLERK

JUDGE'S COPY

PETITION FOR WRIT OF HABEAS CORPUS AND BRIEF IN SUPPORT

Comes now, the Plaintiff & his Counsel in the above entitled civil case, John Richard Jae, as a Layman Unlettered in the Arts & Sciences of the laws & legal procedures within the United States, and files his Petition For Writ of Habeas Corpus And Brief In Support, pursuant to 28 U.S.C. § 1651, hereinafter referred to as the "Petition", who, avers & deposes & states:

I. The Motion

1. On or about March 27, 2001, Defendant C.O. Lester, by Counsel, filed his Motion to Revoke Plaintiff's In Forma Pauperis Status And Stay of Proceedings and on April 10, 2001, filed his Brief In Support of such Motion, herein this case.

2. Plaintiff's Brief In Opposition to Defendant's Motion to Revoke Plaintiff's In Forma Pauperis Status And Stay of Proceedings And Brief In Support to be filed & served, herein this case, on or before June 22, 2001.

3. Plaintiff Jae now moves this Court for an order requiring the Court's officials to return to this Plaintiff all of his legal materials, case file/papers and law books and to provide him with enough paper, envelopes & stamps to enable him to meet court dead line, by & thru this Petition of Habeas Corpus & Brief In Support & based upon the following facts, arguments & citations herein, below & in the

II. Brief In Support

Plaintiff John Richard Jae avers & submits that, he has a Court Filing Dead line of June 22, 2001, for his Brief In Opposition to Defendant's Motion to Revoke Plaintiff's In Forma Pauperis Status And Stay of Proceedings. In support, herein this case sub judge, however, he is unable to meet this here filing dead line, due to the facts that the Court's officials here are illegally withholding his legal materials, case file/papers & law books from him with the same purpose & intent to

to allow him to have sufficient enough time to go thru such property boxes, locate & retrieve & take back to his cell with him, all of the legal materials Court Case files and law books of his which he needs in order to enable him to prepare & file his Court pleadings in Court case and comply with the afore-mentioned Court-deadline, herein, supra, at 2. Additionally, Prison officials here are misquoting Prison B. and illegally deny this Plaintiff, who is an indigent State Prisoner, sufficient enough paper & carbon paper which he needs to prepare his afore-mentioned Court-pleadings in order to file such. Further, Prison officials here at SCI-Greene are illegally refuse to provide this Plaintiff with the legal envelope which he needs to mail his afore-mentioned pleadings to the courts, as such pleadings are too thick for regular size envelopes such as the ones officials provide this Plaintiff with ten (10) at the beginning of each month here.

When Prison officials refuse to allow this Plaintiff to have all of his legal materials in his Prison cell with him & store such in an area outside his control such violates the case's integrity, and at a bare minimum they should, by law, allow sufficient access & time to go thru his Property Boxes in the

from to locate, retrieve & take back to his cell with him the legal materials, court case files/papers & his Law Books which he needs to enable him to prepare his court case pleadings when he has a deadline to meet and anything less would be & is, a denial of access to the courts & this, SCJ - Greene Prison officials have failed to do here.

On May 31, 2001, Plaintiff J. presented an Inmate request form to Mr. Mark Capozza, the SCJ Greene SMU Unit Manager, and advised Mr. Capozza, of his need for the afore-mentioned court case Pleadings/Files & Legal Papers from his stored Property Boxes in the SMU Property Room here, of the afore-mentioned court deadline & of the fact that he has not been given sufficient enough time to search his stored Property Boxes here for his needed court case File/papers & Law Books which he must make/meet such a afore-mentioned court deadline & he requested therein that Mr. Capozza make arrangements to put my stored Property Boxes in the SMU Inmate Law Library with me the next time I go to the Law Library here or that he grant me 1 1/2 hours to go thru my stored property to find such. Mr. Capozza, on May 31, 2001, replied back to me writing on such request to him and denied such & refused to do such & denied me access to the SMU Inmate Law Library in violation of the First Amendment U.S. Constitution.

Additionally, from May 2, 2001 - May 9, 2001, SMU Unit Manager Capozza denied this Plaintiff total access to his legal materials, court case files, law books, that, Capozza illegally refused to allow this Plaintiff to possess any of his legal materials (i.e., paper, carbon, envelopes) at all, thereby illegally causing this Plaintiff to miss the filing deadline of May 10, 2001, for his Petition for Reconsideration of U.S. District Judge's Order in Sae v. Kyle et al., Case No. 1:00-cv-0315, which Plaintiff otherwise have filed in such case, if Mr. Capozza had not illegally denied him such things as - stated & thus causing Plaintiff to suffer an actual injury & a denial of his First Amendment, U.S. Constitutional & Article I, § 20, 14th Constitutional Rights of access to the courts.

On May 6, 2000, Plaintiff Jae wrote & sent out a letter to SCI-B Superintendent Conner Blaine, Jr. and a letter to SCI-Greene Deputy Superintendent for Centralized Services Paul J. Stawitzky about the above referenced denials of Mr. Capozza's (among other things) & a bail that I was going to miss my filing deadline of May 9, 2000.

Superintendent Blaine refused to do anything about such & Deputy Stawitzky violated Policy about responding to correspondence from inmates and failed to even show the common courtesy of responding back to him on such correspondence, as sent to him on May 6, 2000.

Additionally, the SCI-Greene Librarians have failed to supply this Plaintiff with enough paper and carbon paper to prepare his legal pleadings in this afore-mentioned case and have refused to provide this Plaintiff with any large legal size envelopes or need to mail such pleadings out to the court & to counsel for the defense. This Plaintiff is totally indigent and he has no money at all to buy such things. Thus, they too, have illegally denied this Plaintiff his afore-mentioned U.S. Constitutional Rights to access to the courts & both Superintendent Blaine & Deputy Stawitzky are aware of this & yet have failed to do anything about it.

Thus, given the above foregoing facts, it should be clear to all men & most certainly to this court, that this Plaintiff already has been & will be again in the near future, denied his State & Federal Constitutional right of access to the courts unless this court intervenes & grants the relief requested herein this pleading.

In Bands v. Smith, 30 U.S. 47, 99 S.Ct. 1491, 52 L.Ed.2d 117 (1977), the U.S. Supreme Court held, that the Constitution requires prison officials to assist inmates in the preparation of legal

legal papers with the courts. See Bounds, supra, 430 U.S. 181, 97 S.Ct. at 1498.

In Peterkin v. Jeffers, 855 F.2d 1021 (3d Cir. 1988), our Third Circuit U.S. Court of Appeals, reasoned that

An actual injury necessarily occurs by virtue of a prison's failure to provide the level of assistance required under Bounds,

and by failing to allow this Plaintiff to have sufficient access to and to go through his stored legal property boxes to locate, retrieve and back to his cell with him, his necessary legal materials, court case papers & his own personal software law books and by totally denying him to possession of his legal & correspondence materials, court case files, personal law books at all here from 5-02-01 — 5-09-01 from to miss a deadline for his Petition For Reconsideration, herein this case, and him enough paper & carbon to prepare his aforementioned pleading and any law envelopes at all to mail such pleading into this Court & to Counsel for the Defendant. Greene Prison Officials have violated their duty, under the U.S. Constitution, this inmate Plaintiff in the preparation and filing of meaningful legal papers with the they'll much do under Bounds, 430 U.S. at 182, 97 S.Ct. at 1498, and this Plaintiff "has" already suffered actual injury as a direct result thereof such & he "will" suffer actual injury again in the near future as a direct result thereof unless this Court intervenes here to help this Plaintiff the relief which he seeks & requests herein.

Furthermore, this Plaintiff avers & argues that, seizure or deprivation of a prisoner's legal papers may also violate the Constitution. W. Conine, 957 F.2d 339, 354 (4th Cir. 1992); Roman v. Jeffers, 904 F.2d 182, 183 (3d Cir. 1990); Morello v. James, 810 F.2d 344, 347 (6th Cir. 1987); Stamm, 804 F.2d 182, 183 (1st Cir. 1986); Wright v. Newsome, 795 F.2d 96, 101 (1986); Patterson v. Mitchell, 717 F.2d 524, 525 (6th Cir. 1983); Briley, 716 F.2d 644 (8th Cir. 1979); Williams v. FCC Committee, 812 F.2d 1111 (10th Cir. 1986); Gallipeau v. Beard, 734 F. Supp. 498 (D. Cal. 1992); Scully, 606 F. Supp. 176, 183-84 (E.D. N.Y. 1985); Stringer v. Thom, 522 F. Supp. 133, 137 (N.D. Ill. 1983); Sipe v. Boarden-Kitcher, 522 F. Supp. 1265 (N.D. Va. 1981) and the Carter v. Hutto, 701 F.2d 1028 (4th Cir. 1983) U.S. Court of Appeals for the Fourth Circuit, stated and held =

He has asserted that prison officials confiscated and/or destroyed his legal materials some of which were necessary to this information rendering nugatory his

430 U.S. 317, 92 L. 979 - Ct. 144, 1494. 52 L. Ed. 2d 72 (1977)
(states failure to provide legal research facilities denies
inmate access to the courts in violation of the fair hearing amendment)
Hudspeth v. Higgins, 584 F.2d at 1337 - 8 (alleging that correctional
authorities threatened prisoner with physical harm to deter him
from seeking judicial relief states cognizable claim under § 1983)
Oxendine v. Williams, 509 F.2d 1405 (4th Cir. 1975) (confiscation
of legal materials from prisoners constitutes unreasonable interference with
access to courts). Were Carter to succeed in proving these allegations,
his entitlement to some remedy would be beyond dispute. (Carter, 81 Fed. 1032).

Furthermore, in Ryder v. Egan, Deputy Sheriff #574 ESD 427429 (2th Cir 1977), U.S. Court of Appeals for the Eighth Circuit, stated & held:

The taking of a prisoner's legal papers states a claim under 42 U.S.C. § 1983 or 1985 if the taking results in interference with a infringement of the prisoner's constitutional rights of access to the courts. *Sigafus v. Brown*, 416 F.2d 105 (7th Cir. 1969) *aff'd*, 374 F.2d at 441.

Furthermore, in Patterson v. Martinez, 717 F.2d 284 (1983), the U.S. Court of Appeals for the Sixth Circuit, stated & held =

As has been recently summarized =

11. Persons in prison like other individuals have the right to petition the government for redress of grievances which, of course, includes access of prisoners to the courts for the purpose of presenting their complaints. 11 CIV. R. 405 U.S. 34, 351, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 823 (1972), quoting Johnson v. Avery, 393 U.S. 483, 485, 89 S. Ct. 747, 748, 21 L. Ed. 2d 718 (1969).

Mr. House v. Carson, 652 F.2d 371, 373 (2d Cir. 1980). Prison
officials are charged with the responsibility of assuring that
inmate access to the courts is "adequate, effective and meaningful."
Bonds, supra, 975 Ct. at 1495. See also BURNS v. OHIO, 360
U.S. 252, 79 S.Ct. 110, 3 L.Ed. 2d 209 (1959); Smith v. Pennell, 205
U.S. 703, 51 S.Ct. 345, 6 L.Ed. 2d 39 (1961). A Prisoner's First
Amendment guarantees must be freely exercisable without
hesitation. Mr. House, supra, 652 F.2d at 374, n. 10, citing
Fennell v. Moran, 618 F.2d 883, 891-92 (1st Cir. 1980); PGA v. LaV.
Riley, 594 F.2d 1220, 1222-23 (8th Cir. 1979); Hudspeth v.
Friggins, 584 F.2d 1345, 1347 (4th Cir. 1978), cert. denied,
441 U.S. 913, 99 S.Ct. 2013, 60 L.Ed. 2d 386 (1979) (Baldwin,
1717 F.2d at 282).

See also Himerik Wilson, S20 Fads 89, 91 (ad CTR 1975) and
Coughlin, S17 Fads 131, 132 (17th CTR 1975).

Furthermore, plaintiff avers & submits that, prior to affixing his legal research, scientific or otherwise - holding paperwork in

The American Correctional Association (ACA) Standard 3-4.2.2 states that the courts grant, "... the right of access to the courts minimally provides inmates have the right to present any issue, including the following: challenging the legality of their conviction or confinement, seeking relief from illegal conditions or treatment while under correctional control, pursuing remedies in connection with civil legal problems, and asserting against state or other government authority any other right protected by constitutional or state provisions or common law. Inmates seeking judicial relief are not subjected to arbitrary penalties because of the decision to seek relief."

Court access enters the picture through the First Amendment when officials deny the ability to have the materials necessary to comprehend the transcript, evidence and reports of one's conviction. Transcripts and evidence are not generic, but specific to each conviction. Errors in one case may not appear in the next. Thus, prison officials cannot deny an inmate his legal recourse or otherwise, when the inmate's only chance for freedom is "in the books" through the courts.

Finally, in Bounds, supra, 97 S. Ct. at 1496, the U.S. Supreme Court, moreover, our decisions have consistently required states to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is inarguable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them.

For purposes of this pleading only, Plaintiff joins as parties to this action, pursuant to Fed. R. Civ. P., Rule 19(a), Conner Blaine, Sgt-Greene Superintendent and Mark Capozza, Sgt-Greene's Unit Manager.

This Court has jurisdiction to grant the Relief which Plaintiff seeks by/in this petition, pursuant to 28 U.S.C. § 1331.

Also, U.S. District Judge Sylvia H. Rambo of this Court, granted the relief which the Plaintiff seeks in this petition previously, in her orders, dated October 6, 2000, in Jacobs Long, CIVIL No. 99-0001 and the vs. Lockyer, CIVIL No. 99-0001.

(w) HEREOF, based upon the foregoing facts, arguments & citations of authorities, heretofore, Plaintiff John Richard Doe, Jr. that this Court will enter an order, Ordering that this fee/writ is granted, and, SCI-GREENE PRISON OFFICIALS hereby ordered to forthwith return all of his legal materials Court case files/papers & his own personal law books to him here, and that they are to provide this Plaintiff with enough paper & carbon paper, so that he can prepare and file his legal pleading/brief in opposition in this case & that they are to provide this Plaintiff with a Legal Envelope to mail such brief to this Court or Counsel for the Defendant, heretofore this case =

AND HE SHALL EVER PRAY
RESPECTFULLY SUBMITTED

~~John Richard Doe, Jr.~~
(s) MR. JOHN RICHARD DOE, JR.
#BQ-3219
SCI-GREENE/AMU
175 PROGRESS DRIVE
WAYNESBURG, PA. 15370-

Plaintiff and PRSec

Dated: 20th JUNE 2001 =